

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 271 Child Support

**SPONSOR(S):** Kilmer

**TIED BILLS:** IDEN./SIM. BILLS: SB 1060

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services (Sub)		Preston	Liem
2) Future of Florida's Families			
3) Judiciary			
4)			
5)			

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### SUMMARY ANALYSIS

The bill removes the provision from §61.30, Florida Statutes, that automatically reduces the amount of child care expenses incurred as a result of employment, job searching, or certain types of education by either parent by 25% before adding those child care expenses to the basic child support obligation. The bill provides that the impact of the federal tax credit for child care expenses may be considered by the court as a basis for an adjustment to the child support obligation.

There does not appear to be a fiscal impact associated with the bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0271.fff.doc  
**DATE:** February 20, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **Federal Law Related to Child Support Guidelines**

During the 1970s and 1980s, the attention of the federal government became increasingly focused on collecting unpaid child support, however, federal laws and regulations were relatively silent regarding the process for determining the amount of a child support obligation. Historically, the amount of a child support award was determined solely at the discretion of a trier of fact, which in most cases was a judge. Child support orders were set on a case by case basis, with the judiciary assuming responsibility for identifying and verifying parental resources as well as recognizing the needs of all children in each specific family situation. Experience showed that allowing judges or other decisionmakers to subjectively determine the amount of child support obligations routinely resulted in judgments that were not adequate enough to provide satisfactorily for the needs of children and judgments that were considerably different in cases with similar circumstances.

Almost 10 years after the creation of the Child Support Enforcement Program in 1975, a report issued by the Senate Finance Committee noted that while federal law required States to have effective programs for establishing paternity, securing court orders for child support, and enforcing those orders, the adequacy or reasonableness of the amount of support ordered was left entirely to the discretion of the state and its courts.<sup>1</sup> The child support enforcement program had unquestionably increased the ability of children to obtain support orders and retain the monies collected, but in many cases the amount of support ordered was lower than what was necessary to meet the needs of the child, while at the same time taking into consideration the ability of the absent parent to pay, and in other cases awards were unrealistically high. In the limited number of states where guidelines were already being voluntarily used, award levels tended to be higher than in those states where the amount of the award remained entirely discretionary with each judge:

Moreover, the existence of guidelines tends to assure that there is reasonable consideration given both to the needs of the child and the ability of the absent parent to pay. This provides some protection for both parties...

The development of such guidelines will necessarily require States to devote some study to what is appropriate and to review what other States have done. For this reason, the amendment allows two full years (until October 1, 1986)<sup>2</sup> for States to develop the guidelines. The exact

<sup>1</sup> See Senate Report No. 98-387, 1984.

<sup>2</sup> The conference agreement extended the effective date until October 1, 1987, but encouraged states to begin consideration of appropriate guidelines as soon as possible.

nature of the guidelines will be determined by each State and may be established by law or by a judicial conference or other mechanism as may be appropriate in that State...<sup>3</sup>

Just as the Finance Committee recognized the potential value in requiring states to implement and utilize guidelines to be used in the determination of the amount of the child support obligation, it also acknowledged that the development of a court order is a complex endeavor that requires the consideration of an indefinite number of aspects of the unique circumstances of the individual parties involved, and that there may be a need for courts to have the flexibility to exercise discretion. For this reason, proposed legislation left the decision as to how these guidelines were to be considered to each state. It was the view of the Committee, however, that the existence of a set of guidelines per se in each state would lead to an improvement in the reasonableness and equity with which support orders were established.

The Child Support Amendments of 1984 adopted by Congress required states to establish child support guidelines either by law, or by judicial or administrative action no later than October 1, 1987 and to make the adopted guidelines available to all judicial and administrative officials charged with setting the amount of child support obligations. The implementing regulations specified that state guidelines were to be based on descriptive and numeric criteria and result in a computation of the support award. The legislation also specified that the guidelines “need not be binding” upon those judges or other officials.<sup>4</sup>

The Family Support Act of 1988 was enacted to restructure the basic program of public assistance for families through measures that emphasized the importance of parental responsibility, including the enforcement of child support, as well as expanded opportunities for education and training. In order to accomplish the goal of improved child support enforcement, the Family Support Act required states to establish child support guidelines that were presumptive rather than advisory, as was previously permitted. Almost all states, including Florida, complied with this mandate by the congressional deadline of October 13, 1989. In requiring the adoption and use of presumptive guidelines, the federal government had four primary objectives: to enhance the adequacy of child support orders; to improve the equity of orders by assuring more comparable treatment for cases with similar circumstances; to increase compliance as a result of perceived fairness of child support awards; and to improve the efficiency of adjudicating child support orders.<sup>5</sup>

The development of child support guidelines that were fair was not perceived as an easy task in the 1980s. At that time, there were several competing theories on the most equitable and most appropriate way to determine the amount of child support obligations. All states were dealing with the reality that any set of guidelines must adequately contend with public policy issues such as how to calculate parental income; how to treat obligations to subsequent families; how to treat income from second spouses; whether to consider actual earnings or earning capacity; how to treat child care costs incurred by a working custodial parent; how to handle visitation time and expenses; how to handle cost of living differences within a state; and how to best apply guidelines at the upper and lower ends of the income scale.

### **Florida Law Related to Child Support Guidelines and Child Care Costs**

In keeping with the federal requirements, Florida enacted child support guidelines that were based on the income shares model<sup>6</sup> for the first time during the 1987 legislative session and the guidelines were

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<sup>3</sup> See Senate Report No. 98-387, 1984, p. 2436.

<sup>4</sup> See Child Support Enforcement Amendments of 1984, 42 U.S.C. 657-662 (1984) and Chapter 87-95, Laws of Florida.

<sup>5</sup> See Family Support Act of 1988, 42 U.S.C. 654, 666-667 (1988) and Chapter 89-183, Laws of Florida.

<sup>6</sup> The income shares model is based on the concept that the child should receive the same proportion of parental income that he or she would have received if the parents had continued to live together. The basic support amount is based on the combined income of both parents which serves to replicate total income in a two parent household. That basic obligation is then divided between the parents in proportion to their relative incomes. Pro-rated shares of child care costs,

given advisory status as permitted at that time by federal law. The provision related to child care costs stated:

Child care costs incurred on behalf of the children due to employment or job search of either parent shall be added to the basic obligation. Child care costs shall not exceed the level required to provide quality care from a licensed source for the children.<sup>7</sup>

During the first review <sup>8</sup>of Florida's child support guidelines conducted in 1992, the issue of tax credits for child care costs was raised, even though it was discussed in the guidelines literature much earlier. In a report summarizing the proceedings of a national conference held in 1986 related to guideline development it was stated:

Many states have adopted or drafted guidelines that prorate actual child care expenses between the parents after computing the underlying support obligation, which is the approach endorsed earlier in this paper. To the extent that actual or projected expenses must be calculated in order to apply this approach, it may be appropriate to subtract the federal and/or state dependent care tax credit from the expenses incurred, as has been suggested in several states. However, an amount for the dependent care tax credit should not be subtracted from the custodial parent's care expenses except to the extent that she is actually eligible to claim and receive that amount on her tax return. For example, the federal dependent care credit has no value to the extent that it exceeds tax liability, so a low-income custodial parent with minimal tax liability might not receive the full value to the credit to which she initially appears entitled.<sup>9</sup>

The Florida guidelines review report noted that the custodial parent who pays for the costs for child care is able to claim a tax credit for certain child care expenditures and that many employers provide for pre-tax benefits for child care expenses, both of which benefit the custodial parent. The interim project report proposed three options for the Legislature to consider during the 1993 legislative session:

- Keep child care as an additional expense which is added after the amount of support is determined;
- Keep child care as an additional expense which is added after the amount of support is determined, but reduce the amount of allowable child care costs by the amount of any tax benefit received by the custodial parent; or
- Allow the custodial parent to deduct the child care expenses from gross income rather than have child care amount as an amount which is added to the basic support obligation.<sup>10</sup>

During both the 1993 and 1994 legislative sessions, §61.30(7), Florida Statutes, related to child care costs, was amended to provide:

Child care costs incurred on behalf of the children due to employment, job search, **or education calculated to result in employment or to enhance income of current employment** of either parent **shall be reduced by 25 percent and then** shall be added to the basic obligation. Child

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health insurance premiums, and uninsured medical expenses are added to the base obligation of each parent. The income shares model can be found in both gross and net income versions, both of which are designed to produce closely equivalent results. Some states include further adjustments for various custody and visitation arrangements, transportation expenses related to visitation, additional dependents, and educational expenses.

<sup>7</sup> See §61.30(7), Florida Statutes (1987).

<sup>8</sup> In addition to providing for presumptive child support guidelines, the Family Support Act also required states to review, and revise, if appropriate, their guidelines at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

<sup>9</sup> Women's Legal Defense Fund. (1987). Essentials of Child Support Guidelines Development: Economic Issues and Policy Considerations. Proceedings of the Women's Legal Defense Fund's National Conference on the Development of Child Support Guidelines. Washington, D.C.

<sup>10</sup> See Florida House of Representatives, Committee on Judiciary. (1992). Child Support Guidelines, Interim Project Report.

care costs shall not exceed the level required to provide quality care from a licensed source for the children (new language bolded).<sup>11</sup>

Child care costs incurred on behalf of the children due to employment, job search, or education calculated to result in employment or to enhance income of current employment of either parent shall be reduced by 25 percent and then shall be added to the basic obligation. **After the adjusted child care costs are added to the basic obligation, any moneys prepaid by the noncustodial parent for child care costs for the child or children of this action shall be deducted from that noncustodial parent's child support obligation for that child or those children.** Child care costs shall not exceed the level required to provide quality care from a licensed source for the children (new language bolded).<sup>12</sup>

## Child Support Obligations and Child Care Costs

States, including Florida, that have adopted the income shares model for child support guidelines, rely on a schedule based on the estimated ordinary costs for raising children that includes items such as housing, utilities, food, clothing, and transportation. The schedule does not include costs associated with health insurance, uninsured routine medical expenses, extraordinary medical expenses, or child care that are many times necessary to rear a child. These kinds of costs can be expected to vary from child to child and for that reason are difficult to “build in” to the basic child support guideline amount. The United States Commission on Interstate Child Support recommended that all states should include in their child support guidelines a quantitative method to account for work-related or job training-related child care expenses incurred by either parent, health insurance, related uninsured health care expenses, and extraordinary school expenses.<sup>13</sup> States generally treat the issue of costs related to health insurance, uninsured healthcare, and child care in one of three ways:<sup>14</sup>

### • ADD-ON METHOD.

This method provides for the basic child support obligation to be established and the cost of day care to be added to that obligation. The cost of day care is then apportioned between the parents in the same proportion as the base support. Any amount of child care costs actually paid by the obligor or noncustodial parent is deducted from the support obligation. This method is most often used in states with guidelines based on the income shares model.

### • SUBTRACTION METHOD.

This approach provides that the actual cost of providing for child care is to be subtracted from the gross income of the paying parent before the support obligation is calculated. This would serve to reduce the income of the paying parent so that the amount of income on which the support award is based is lower. Using this method, both parents are actually assuming part of the cost of day care but not in the same proportion as would be indicated by the amount of each parent's income. The “subtraction” method is most often used in states with guidelines based on the percentage of income model or Melson formula model.

### • DEVIATION METHOD.

This method typically provides the courts or other decisionmakers with the discretion to subtract all or a portion of day care costs incurred on behalf of a child from the obligor's obligation for support. This method is most often used in percentage of income states where only the income of the obligor is considered.

<sup>11</sup> See §61.30(7), Florida Statutes (1993).

<sup>12</sup> See §61.30(7), Florida Statutes (1994).

<sup>13</sup> See U.S. Commission on Interstate Child Support. (1993). Supporting Our Children: A Blueprint for Reform. A report to Congress. P. xx.

<sup>14</sup> See L. Morgan. Child Support Guidelines: Interpretation and Application. Aspen Law and Business: New York. (2003).

Both the add-on approach and the subtraction approach have found support in the literature.

Child support obligations can vary greatly depending not only on the method of handling day care costs, but also on the income level of the parents and the disparity in income between the two parents. Generally, the add-on method will result in a smaller support award. The subtraction method is therefore the better approach because it results in a higher child support obligation.<sup>15</sup>

The add-on method is the better method, because while it typically results in a smaller award, it fairly allocates the cost incurred for day care between the parents based on which parent has the greater ability to pay those costs. The subtraction method does not as fairly apportion the day care costs because the paying parent bears a much greater proportion of the costs. There is no justifiable reason why day care costs should not be divided between parents in the same manner as the ordinary costs – in proportion to their relative incomes. In addition, those states that treat child care costs as an add-on create additional advantages by preventing the custodial parent from receiving little or no benefit from working and allowing for the fact that income from the custodial parent causes a reduction in the percentage share owed by the noncustodial parent.<sup>16</sup>

### **Federal Child Care Tax Credit**

Currently, the federal dependent-care tax credit is available for work-related child care expenses up to a maximum of \$3,000 for one child and \$6,000 for two or more children. The maximum adjusted gross income that qualifies for the highest percentage (35%) is \$15,000. The amount of the credit is determined by multiplying the eligible child care expenses by a percentage that ranges from 20-35% depending on adjusted gross income. The credit is subtracted from personal income tax liability.<sup>17</sup>

The tax credit is only available to the custodial parent and only for expenses actually incurred.<sup>18</sup> In order to exercise the advantage of this credit, most states structure their support awards so that the custodial parent pays the child care expenses and the obligor pays the obligee for either a portion of, or even all, the child care costs incurred. States have for the most part chosen either to apportion those costs between the parents in proportion to income or to divide them equally between the parents, with the former arguably being the more equitable approach. In addition, “to prevent the obligee from obtaining a windfall by taking advantage of the tax credit, however, most states provide that the cost of child care actually added to the child support obligation is calculated by subtracting the child care tax credit from the expense incurred.”<sup>19</sup>

The bill amends §61.30, Florida Statutes, related to child support guidelines, to remove the provision that automatically reduces the amount of child care expenses incurred as a result of employment, job searching, or certain types of education by either parent by 25% before adding those child care expenses to the basic child support obligation. The bill provides that the impact of the federal tax credit for child care expenses may be considered by the court as a basis for an adjustment to the child support obligation. This change does not serve to change the actual method of allocating child care expenses. Florida would still be considered to be an add-on state; the add-on would simply not be automatically reduced by 25%.

### **C. SECTION DIRECTORY:**

**Section 1.** Amends §61.30, Florida Statutes, related to child support guidelines, to remove the provision that automatically reduces the amount of child care expenses incurred as a result of

<sup>15</sup> L. Elrod, Adding to the Basic Support Obligation in Child Support Guidelines: The Next Generation. 1994

<sup>16</sup> L. Morgan, Child Support Guidelines: Interpretation and Application. Aspen Law and Business: New York (2003).

<sup>17</sup> See Publication 503, Child and Dependent Care Expenses, Internal Revenue Service, Department of the Treasury.

<sup>18</sup> See Publication 503, Child and Dependent Care Expenses, Internal Revenue Service, Department of the Treasury.

<sup>19</sup> L. Morgan, Child Support Guidelines: Interpretation and Application. Aspen Law and Business: New York (2003).

employment, job searching, or certain types of education by either parent by 25% before adding those child care expenses to the basic child support obligation. The bill provides that the impact of the federal tax credit for child care expenses may be considered by the court as a basis for an adjustment to the child support obligation.

**Section 2.** Reenacts §39.402, Florida Statutes, related to placement of dependent children in shelter, to incorporate the amendment to §61.30, Florida Statutes.

**Section 3.** Reenacts §39.521, Florida Statutes, related to disposition hearings for dependent children, to incorporate the amendment to §61.30, Florida Statutes.

**Section 4.** Reenacts §61.13, Florida Statutes, related to the custody and support of children, to incorporate the amendment to §61.30, Florida Statutes.

**Section 5.** Reenacts §61.14, Florida Statutes, related to the modification and enforcement of support, to incorporate the amendment to §61.30, Florida Statutes.

**Section 6.** Reenacts §409.2563, Florida Statutes, related to the administrative establishment of child support orders, to incorporate the amendment to §61.30, Florida Statutes.

**Section 7.** Reenacts §409.2564, Florida Statutes, related to actions for child support, to incorporate the amendment to §61.30, Florida Statutes.

**Section 8.** Reenacts §742.031, Florida Statutes, related to orders for child support, to incorporate the amendment to §61.30, Florida Statutes.

**Section 9.** Provides an effective date of October 1, 2004.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The Department of Revenue reported that there would be no fiscal impact to the agency as a result of this bill. The Office of the State Courts Administrator also reported no fiscal impact from the bill.

The Office of State Courts Administrator also reports no fiscal impact.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

An increase or decrease in the amount of a child support obligation in a particular case will have a financial impact on that individual family.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not affect county or municipal government.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

There appears to be a drafting error in the directory language for section 3. of the bill. It states that §39.521, Florida Statutes is being amended, when it is actually being reenacted to incorporate the amendment to §61.30, Florida Statutes.

Currently, §61.30, Florida Statutes, appears to contain some inconsistencies related to the consideration of child care expenses that are incurred when custodial parents work.

- §61.30 (3), Florida Statutes, provides that allowable deductions from gross income shall include federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities. This could be interpreted to treat child care costs via the subtraction method by deducting those costs from gross income.
- §61.30 (7), Florida Statutes, provides that child care costs incurred on behalf of the children due to employment, job search, or education calculated to result in employment or to enhance income of current employment of either parent shall be reduced by 25 percent and then shall be added to the basic obligation. After the adjusted child care costs are added to the basic obligation, any moneys prepaid by the noncustodial parent for child care costs for the child or children of this action shall be deducted from that noncustodial parent's child support obligation for that child or those children. This methodology treats child care costs as an add-on after automatically deducting 25% of day care costs.
- §61.30 (11)(a), Florida Statutes, provides the court may adjust the minimum child support award, or either or both parents' share of the minimum child support award, based upon consideration a particular shared parental arrangement that provides that each child spend a substantial amount of time with each parent. In those cases, the net amount of the expenses incurred for day care and health insurance coverage for the child are calculated, with day care expenses being calculated without regard to the 25-percent reduction applied by subsection (7). This adds additional confusion because a deviation is permitted/required for shared parental arrangements and child care expenses are treated without the 25% disregard.

Even though the provisions of the bill do not change the model for treating day care expenses, eliminating the 25% reduction will predictably have some effect, either an increase or a decrease, on the amount of child support obligations and therefore some economic impact on families.



The bill addresses the “federal child care tax credit”. There is not a distinction made between the Child Tax Credit and the Child and Dependent Care Expenses credit currently allowed by the Internal Revenue Service.<sup>20</sup> While this bill eliminates the automatic 25% reduction in the amount of child care expenses incurred as a result of employment, job searching, or certain types of education by either parent before adding those child care expenses to the basic child support obligation which should provide a fairer and more accurate determination and apportionment between parents of such costs, it does not appear to provide clarity for judges related to the treatment of the multiple provisions in §61.30, Florida Statutes, related to child care costs.

The House Committee on the Future of Florida’s Families, in conjunction with the Senate Committee on Children and Families, is currently reviewing the child support guidelines pursuant to the federal requirement. The final recommendations have not yet been received from the Department of Economics at Florida State University. Those recommendations are anticipated to result in a comprehensive rewrite of the child support guidelines, which will almost certainly include changes related to the treatment of child care costs.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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<sup>20</sup> IRS Publication 503 provides information regarding the Child and Dependent Care Expenses and Publication 972 addresses the Child Tax Credit.